



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 17]

नई दिल्ली, मंगलवार, मई 22, 2012/ ज्येष्ठ 1, 1934 (शक)

No. 17]

NEW DELHI, TUESDAY, MAY 22, 2012/JYAISTHA 1, 1934 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 22nd May, 2012:—

BILL NO. 62 OF 2012

A Bill to provide for development and regulation of the micro finance institutions for the purpose of facilitating access to credit, thrift and other micro finance services to the rural and urban poor and certain disadvantaged sections of the people and promoting financial inclusion through such institutions and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Micro Finance Institutions (Development and Regulation) Act, 2012.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) "annual percentage rate" means aggregate rate per annum in percentage consisting of interest, processing fees, service charges and any other charges or fees

realised by the micro finance institution on any micro finance services provided to any client;

(b) "client" means any member of the micro finance institution or self-help group or any other group availing the micro finance services from such institution or group;

(c) "co-operative society" means a co-operative society registered as such under any law relating to co-operative societies for the time being in force;

(d) "Council" means the Micro Finance Development Council constituted under section 3;

(e) "District Micro Finance Committee" means a Committee constituted by the Reserve Bank under section 10;

(f) "margin" means the difference between the annual percentage rate charged by the micro finance institution and the cost of funds raised in percentage by the micro finance institution for providing any micro credit facilities;

(g) "Member" means a Member of the Micro Finance Development Council constituted under section 3;

(h) "micro credit facilities" means any loan, advance, grant or any guarantee given or any other credit extended in cash or kind with or without security or guarantee;

(i) "micro finance institution" means,—

(A) a society registered under the Societies Registration Act, 1860; or

21 of 1860.

(B) a company registered under section 3 of the Companies Act, 1956; or

1 of 1956.

(C) a trust established under any law for the time being in force; or

(D) a body corporate; or

(E) any other organisation, as may be specified by the Reserve Bank,

the object of which is to provide micro finance services in such manner as may be specified by regulations but does not include—

(i) a banking company, the State Bank of India including its subsidiary banks, a scheduled bank, a co-operative bank, Export and Import Bank, Reconstruction Bank, National Housing Bank, National Bank, a Regional Rural Bank and Small Industries Development Bank;

(ii) a co-operative society engaged primarily in agricultural operations or industrial activity or purchase or sale of any goods;

(iii) any individual carrying on the activity of money-lending and registered as a moneylender under the provision of any State law which regulates such activities;

(j) "micro finance services" means any one or more of the following financial services provided by any micro finance institution, namely:—

(A) micro credit facilities involving such amount, not exceeding in aggregate five lakh rupees for each individual and for such special purposes, as may be specified by the Reserve Bank from time to time, such higher amount, not exceeding ten lakh rupees, as may be prescribed;

(B) collection of thrift;

(C) pension or insurance services;

(D) remittance of funds to individuals within India subject to prior approval of the Reserve Bank and such other terms and conditions, as may be specified by regulations;

(E) any other such services, as may be specified,
in such manner, as may be prescribed;

61 of 1981. (k) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;

(l) "notification" means a notification published in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Act;

21 of 1976. (n) "Regional Rural Bank" means a Regional Rural Bank established under sub-section (1) of section 3 of the Regional Rural Banks Act, 1976;

(o) "regulations" means regulations made by the Reserve Bank;

2 of 1934. (p) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

(q) "State Micro Finance Council" means the State Micro Finance Council established by the Central Government under section 8;

(r) "thrift" means money collected in any form other than in the form of current account or demand deposits, by a micro finance institution from members of self-help groups or any other group of individuals, by whatever name called, who are availing micro finance services provided by such micro finance institution in accordance with the regulations made by the Reserve Bank in this behalf.

2 of 1934. (2) Words and expressions used and not defined in this Act but defined in the Reserve
10 of 1949. Bank of India Act, 1934, the Banking Regulation Act, 1949, the Companies Act, 1956, the
1 of 1956. Regional Rural Banks Act, 1976, the Export-Import Bank of India Act, 1981, the National
21 of 1976. Bank for Agriculture and Rural Development Act, 1981, the Industrial Reconstruction Bank
28 of 1981. of India Act, 1984, the National Housing Bank Act, 1987 and the Small Industries Development
61 of 1981. Bank of India Act, 1989, shall have the same meanings respectively assigned to them in
62 of 1984. those Acts.
53 of 1987.
39 of 1989.

CHAPTER II

MICRO FINANCE DEVELOPMENT COUNCIL

3. The Central Government may, by notification, constitute a Council to be known as the Micro Finance Development Council to discharge the functions assigned to it under this Act.

Constitution
of Micro
Finance
Development
Council.

4. The Council shall consist of the following members, namely:—

Composition
of Council.

(a) a person of eminence, with experience in the field of banking, rural credit and micro finance, to be nominated by the Central Government—Chairperson;

(b) four officers, one each from the Ministry or the Department of the Central Government having the administrative control of Finance, Rural Development, Women and Child Development and Housing and Urban Poverty Alleviation, not below the rank of Joint Secretary to the Government of India, to be nominated by the Central Government—*ex officio* Members;

(c) an officer of the Reserve Bank, not below the rank of an Executive Director, to be nominated by the Reserve Bank—*ex officio* Member;

(d) an officer of the Small Industries Development Bank of India, not below the rank of an Executive Director, to be nominated by the Small Industries Development Bank of India—*ex officio* Member;

(e) an officer of the National Bank dealing with micro finance, not below the rank of an Executive Director, to be nominated by the National Bank—*ex officio* Member;

(f) an officer of the National Housing Bank, not below the rank of an Executive Director, to be nominated by the National Housing Bank—*ex officio* Member;

(g) not more than four persons, of whom at least two shall be women, to be nominated by the Central Government, in consultation with the Reserve Bank from amongst persons with experience in the field of banking, rural credit or micro finance or the representatives of micro finance institutions or scheduled banks or any other institution providing micro finance services—Members.

Terms of office and allowances of members of Council.

5. (1) A member of the Council shall hold office for a period of three years and shall be eligible for reappointment.

(2) Members of the Council shall receive such fees and allowances as may be prescribed.

Meetings of Council.

6. The Council shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

Functions of Council.

7. (1) The Council shall advise the Central Government on formulation of policies and measures to be undertaken for orderly growth and development of micro finance institutions and schemes to be framed therefor.

(2) Without prejudice to the provisions contained in sub-section (1), the Council may advise the Central Government on formulation of policies, measures to be taken and schemes to be framed for —

(a) the adoption of any innovations and use of technology in providing micro finance services;

(b) establishing credit information bureaus for creation of database of clients availing micro finance services from various micro finance institutions;

(c) the working of grievance redressal mechanisms to protect the interest of clients of micro finance services; or

(d) any other matter which may be referred to the Council by the Central Government for protecting the interest of clients availing micro finance services and in the interest of promotion of financial inclusion.

CHAPTER III

STATE MICRO FINANCE COUNCILS

Establishment and functions of State Micro Finance Council.

8. (1) The Central Government may, by notification, establish a State Micro Finance Council for micro finance services in each State and considering the extent of micro finance activities in the States, establish such a Micro Finance Council for two or more States.

(2) Each State Micro Finance Council shall consist of the following members, namely :—

(a) two nominees of the concerned State or States, one of whom to be designated by the Central Government as Chairperson;

(b) a representative of the Convener Bank of the State Level Bankers' Committee for any State or States;

(c) one person representing the micro finance institutions operating in the State nominated by the Central Government; and

(d) one person having experience in the field of micro finance, nominated by the Reserve Bank.

- (3) Every State Micro Finance Council shall be responsible to—
- (a) coordinate the activities of the District Micro Finance Committees in the State;
 - (b) review growth and development of micro finance activities in the State;
 - (c) monitor over-indebtedness, if any, caused by micro finance institutions in the State; and
 - (d) monitor whether methods of recovery used by micro finance institutions are in accordance with the guidelines made by the Reserve Bank and to report to the Reserve Bank in respect of the violations, if any.
- (4) The Central Government may, by notification, entrust such other functions of the Council under section 7 to any State Micro Finance Council subject to such terms and conditions as it deems fit.
- (5) Each State Micro Finance Council shall submit a quarterly report to the Central Government on the implementation of the measures undertaken for the promotion and development of the micro finance institutions in the State including the following matters, namely:—
- (a) micro credit activities undertaken by micro finance institutions, over-indebtedness of clients, if any, and consequent large scale defaults;
 - (b) recovery practices adopted by micro finance institutions whether fair and reasonable;
 - (c) working of the grievance redressal mechanism;
 - (d) overall assessment of the impact of measures undertaken and schemes framed;
 - (e) any other matter which the State Micro Finance Council deems necessary to bring to the notice of the Central Government.
9. A member of the State Micro Finance Council shall hold office for such term not exceeding three years and receive such fees and allowances as may be prescribed.

Term of office and allowances of State Micro Finance Council.

CHAPTER IV

DISTRICT MICRO FINANCE COMMITTEES

10. (1) The Reserve Bank may, constitute a District Micro Finance Committee in each district, to be headed by the Collector or an officer not below the rank of Additional Collector in that district in such manner as may be specified by regulations.

Constitution of District Micro Finance Committee.

(2) The District Micro Finance Committee shall meet at such time and place, as the Collector may direct, at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be specified by regulations:

Provided that the representatives of the Lead Bank of the District, representative of the National Bank in the district, a representative of micro finance institutions operating in the district and beneficiaries of micro finance services shall be invited to the meetings of the District Micro Finance Committees.

Explanation.—For the purposes of this section, "Lead Bank of the District" means a bank to which a district is assigned as per the Lead Bank Scheme of the Reserve Bank of India.

11. The District Micro Finance Committee shall discharge the following functions, namely:—

Functions of District Micro Finance Committee.

- (a) to review growth and development of micro finance activities in the district;

(b) to monitor over-indebtedness, if any, caused by micro finance institutions in the district; and

(c) to monitor whether methods of recovery used by micro finance institutions are in accordance with the guidelines made by the Reserve Bank and to report to the Reserve Bank in respect of the violations, if any.

Report of
District Micro
Finance
Committee.

12. Every District Micro Finance Committee shall submit a quarterly report to the Reserve Bank in such form and manner as may be specified and forward its copy to the State Micro Finance Council.

CHAPTER V

REGISTRATION OF MICRO FINANCE INSTITUTIONS

No micro
finance
services
without
registration.

13. Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, no micro finance institution after the commencement of this Act, shall commence or carry on the activity of providing micro finance services without obtaining a certificate of registration under this Act.

Application
for
registration.

14. (1) A micro finance institution, which intends to carry on the activity of providing micro finance services, shall make an application for registration to the Reserve Bank in such form and manner along with such fee as may be specified by regulations:

Provided that any micro finance institution, in existence at the commencement of this Act, engaged in providing micro finance services before such commencement, shall within three months from the date of such commencement, make an application to the Reserve Bank for registration in the form and manner as specified under sub-section (1):

Provided further that any micro finance institution, in existence at the commencement of this Act, engaged in providing micro finance services before such commencement, may continue to carry on its activity of providing micro finance services till the disposal of such application.

(2) Notwithstanding anything contained in sub-section (1), any company registered as a non-banking finance company with the Reserve Bank of India under the provisions of Chapter III-B of the Reserve Bank of India Act, 1934, and engaged in extending micro finance services shall continue to do so and comply with the terms and conditions of its registration and any rules, regulations, directives and guidelines issued by the Reserve Bank to the non-banking finance companies, from time to time and also such other rules, regulations, directives and guidelines of the Reserve Bank as may be made or issued by the Reserve Bank for or to the micro finance institutions, under this Act.

2 of 1934.

Grant of
certificate.

15. (1) The Reserve Bank may, for the purpose of grant of certificate of registration, satisfy itself that—

(a) the general character or management of the micro finance institution is not or is not likely to be prejudicial to the interest of the present or future clients availing micro finance services;

(b) the micro finance institution is engaged in or intends to engage in providing micro finance services;

(c) the applicant has a net owned fund, created out of contributions to capital, reserves or grants or donations received by it, of at least five lakh rupees or such other higher amounts as may be specified by regulations.

Explanation.— For the purpose of this sub-section, "net owned fund" shall have, *mutatis mutandis*, the same meaning as assigned to it in the *Explanation* to sub-section (7) of section 45-IA of the Reserve Bank of India Act, 1934.

2 of 1934.

(2) The Reserve Bank may, after being satisfied that the conditions referred to in sub-section (1) are fulfilled, grant a certificate of registration to the micro finance institution to commence or continue to carry on the business of providing micro finance services subject to such conditions as it may consider necessary to impose:

Provided that no application for registration shall be rejected unless the applicant has been given an opportunity of being heard.

(3) Save as otherwise provided in this Act, every micro finance institution registered under this Act shall provide micro finance services to its clients in accordance with provisions of this Act and rules and regulations made thereunder.

(4) Every micro finance institution shall give preference for providing micro credit facility to the rural and urban poor and other disadvantaged sections of the people.

16. (1) The Reserve Bank may, by order, cancel the certificate of registration granted to a micro finance institution under section 15, if such micro finance institution—

Power of Reserve Bank to cancel certificate of registration.

(i) ceases to carry on the activity of providing micro finance services; or

(ii) has failed to comply with any of the conditions subject to which the certificate of registration has been granted under sub-section (2) of section 15; or

(iii) fails to comply with any direction issued by the Reserve Bank under the provisions of this Act; or

(iv) fails to submit or offer for inspection of its books of account and other relevant documents under sub-section (4) of section 27; or

(v) fails to comply with directives stipulated in the Cease and Desist order passed under section 28.

(2) Before cancelling the certificate of registration of any micro finance institution under sub-section (1), the Reserve Bank shall provide a reasonable opportunity of being heard to such micro finance institution.

17. (1) A micro finance institution aggrieved by an order of rejection of an application for grant of certificate of registration under section 15, or cancellation of certificate of registration under section 16, or any action taken by the Reserve Bank under sub-section (6) of section 27, may prefer an appeal to the Central Government or such other authority, as may be prescribed, within a period of sixty days from the date on which such order is communicated to the micro finance institution.

Appeal against certain cases.

(2) The appeal shall be filed in such form and in such manner, as may be prescribed.

(3) The decision of the Central Government or the authority, where an appeal has been preferred under sub-section (1), shall be final:

Provided that before making any order of rejection of appeal, such micro finance institution shall be given a reasonable opportunity of being heard.

CHAPTER VI

RESERVE, ACCOUNTS, AUDIT AND RETURNS

18. (1) Every micro finance institution registered with the Reserve Bank under this Act shall create a reserve fund and transfer therein a sum, representing such percentage, as may be specified by the Reserve Bank, of its net profit or surplus realised by providing micro finance services every year as disclosed in the profit and loss account or income and expenditure account and before surplus is utilised for any other purpose:

Obligation to create reserve fund.

Provided that nothing contained in this sub-section shall apply to a non-banking finance company registered with the Reserve Bank which is maintaining such reserve fund pursuant to any provisions of the Reserve Bank of India Act, 1934 or any directions or regulations issued thereunder.

(2) No appropriation of any sum from the reserve fund shall be made by the micro finance institution, except for the purpose, as may be specified by the Reserve Bank from time to time, and every such appropriation shall be reported to the Reserve Bank within twenty-one days from the date of such appropriation.

(3) The Reserve Bank may, in the public interest or in the interest of clients of any micro finance institution, direct any micro finance institution or any class of micro finance institutions to invest the whole or part of such reserve fund in such unencumbered securities, as it may, by regulations specify.

Accounts and
balance sheet.

19. At the close of each financial year, every micro finance institution shall prepare, with reference to that year, in respect of all services transacted by it, a balance sheet, profit and loss account or an income and expenditure account as on the last working day of the financial year, in such form as may be specified by regulations.

Audit.

20. The balance sheet, profit and loss account or an income and expenditure account of the micro finance institution prepared in accordance with section 19 shall be audited by a person duly qualified under law for the time being in force to be an auditor of companies formed and registered under the Companies Act, 1956, or an auditor from the list of Chartered Accountants or other qualified persons approved by the Reserve Bank.

1 of 1956.

Explanation.—For the purposes of this section "person duly qualified" means a person having qualification and experience, as may be specified by regulations.

Special audit.

21. (1) Without prejudice to the provisions contained in section 20, where the Reserve Bank is of the opinion that it is necessary in the public interest or in the interest of clients or for the purpose of proper assessment of the records and books of account of the micro finance institutions, so to do, it may at any time, by order, direct a special audit of the accounts of such micro finance institution, for such transaction or class of transactions conducted by it or for such period or periods, as may be specified in the order and may by the same or a different order either appoint a person duly qualified under any law for the time being in force to be an auditor of companies and direct that the auditor shall comply with such directions as it may specify in that order and make a report of such audit to the Reserve Bank and forward a copy thereof to the micro finance institutions.

(2) The expenses of, or incidental to the special audit, specified in the order made by the Reserve Bank, shall be borne by the micro finance institutions.

Powers of
auditors.

22. (1) The auditor appointed for audit under section 20 or for special audit under section 21 shall have the powers of, exercise the functions vested in, discharge the duties and be subject to the liabilities and penalties imposed on, the auditors of companies under section 227 of the Companies Act, 1956 and the auditors, if any, appointed under any law establishing, constituting or forming the micro finance institution concerned.

1 of 1956.

(2) Without prejudice to the provisions contained in sub-section (1), the auditor shall report—

(a) whether or not, the information and explanations required have been found to be satisfactory;

(b) whether the profit and loss account or income and expenditure account, as the case may be, shows the true balance of profit or income or loss for the period covered by such account;

(c) any other matter including defaults in repayment of thrift or interest thereon which the auditor considers necessary to be brought to the notice of eligible clients and the Reserve Bank to ensure good governance and transparency in the business of the micro finance institution concerned.

(3) Where any of the matters referred to in clauses (a) and (b) of sub-section (2) is answered in negative or with qualification, the auditor's report shall state the reasons for the same.

23. Save as otherwise provided in this Act, every micro finance institution, at the commencement of this Act, shall, within ninety days from the date of such commencement, file with the Reserve Bank a return containing particulars of its activities in such form and manner and thereafter at such intervals as may be specified by regulations.

Returns to be filed by micro finance institutions.

CHAPTER VII

FUNCTIONS AND POWERS OF RESERVE BANK

24. (1) The Reserve Bank shall regulate, promote and ensure orderly growth of the micro finance institutions and take measures as it deems fit, for the purpose of promoting financial inclusion through such institutions.

Functions and powers of Reserve Bank.

(2) Without prejudice to the generality of the foregoing provisions contained in sub-section (1), the powers and functions shall include—

(a) grant of certificate of registration to the applicant micro finance institution under section 15 or cancellation of such certificate under section 16;

(b) making of schemes for the orderly growth of the micro finance services provided by micro finance institutions so as to ensure greater transparency, effective management and good governance in an efficient manner;

(c) specifying the maximum limit of the margin and the annual percentage rate to be charged by the micro finance institution for providing micro credit facilities to its clients;

(d) specifying the sector related benchmarks and performance standards pertaining to methods of operation, fair and reasonable methods of recovery, management and governance including model codes for conduct of activities of micro finance institutions;

(e) facilitating the development of credit rating norms or rating norms for other purposes for micro finance institutions;

(f) specifying the form and manner of books of account to be maintained by micro finance institutions;

(g) specifying the form and manner of accounting of business operations of micro finance institutions and auditing standards relating thereto;

(h) calling for information and data from micro finance institutions for maintaining an appropriate database in the public domain relating to micro finance services and disseminating the same through a national dissemination network;

(i) constituting a Micro Finance Development Fund and to apply it for the purposes as provided in section 32;

(j) promoting development of micro finance institutions, engaged in micro finance services through training and capacity building measures;

(k) promoting customer education of all institutions engaged in micro finance services for greater awareness and for economic empowerment of micro finance clients;

(l) supporting research, field research, documentation and dissemination thereof relating to micro finance sector;

(m) coordinating with other agencies for orderly growth and development of institutions engaged in the micro finance services;

(n) documenting and disseminating information relating to best practices with a view to ensuring provision of micro finance services at an affordable cost to eligible clients; and

(o) perform such other functions as may be prescribed.

Power of Reserve Bank to issue directions to micro finance institutions.

25. (1) If the Reserve Bank is satisfied that, in the public interest or to prevent the affairs of any micro finance institution being conducted in a manner detrimental to the interest of the clients availing micro finance services or in a manner prejudicial to the interest of the micro finance institution, it is necessary or expedient so to do, it may give directions to a class or classes or all micro finance institutions generally, as the case may be, and such micro finance institution shall be bound to follow the policy so determined and the directions so issued.

(2) In particular and without prejudice to the generality of the foregoing powers, such directions may provide for all or any of the following matters, namely: —

(a) extent of deployment of assets for providing micro finance services and proportion of clients availing such services, necessary to classify any institution as micro finance institution;

(b) ceiling on amount of micro credit facilities and the number of individual clients to whom such micro credit facilities may be provided by any micro finance institution;

(c) tenure of micro credit facilities given to clients and other terms and conditions for which micro credit facilities, can be given, margin caps and periodicity of repayment schedules;

(d) levy of processing fees, interest, life insurance premium and other terms relating to micro credit facilities including the ceiling on the percentage of margin to be maintained by a micro finance institution;

(e) the maximum annual percentage rate which may be charged by a micro finance institution on the micro credit facilities granted to any client;

(f) the locations where micro credit facilities may be sanctioned and disbursed by micro finance institutions;

(g) micro finance institutions to become members of Credit Information Bureaus that may be set up for the micro finance sector;

(h) observing code of conduct formulated by any organisation of micro finance institution recognised by the Reserve Bank and setting up of grievance redressal mechanism for their clients as required by such organisation;

(i) a Client Protection Code and its acceptance and observance by micro finance institutions;

(j) micro finance institutions to achieve better control, simplification of procedures and reduction of costs by use of information technology;

(k) the minimum net worth of micro finance institutions considering their size of operations and other relevant parameters;

(l) norms for corporate governance to be observed by micro finance institutions;

(m) prudential norms relating to income recognition, accounting standards, provisioning for bad and doubtful debts, capital adequacy based on risk weights for assets and deployment of funds;

(n) disclosure of assignments or securitisation of assets as also assets assigned with recourse or with arrangement as agent for collection of loan instalments;

(o) raising of preference share capital or other capital by micro finance institution;

(p) grant of recognition to any self Regulatory Organisation of micro finance institutions for efficient conduct of the business of micro finance institution; and

(q) such other directions as may be specified by regulations.

26. (1) A micro finance institution engaged in the activity of providing micro credit facilities shall not collect a margin which is in excess of the maximum limit thereof, as may be specified from time to time by the Reserve Bank, for a micro finance institution or a class of micro finance institutions.

Margin not to be in excess of maximum limit.

(2) The Reserve Bank may specify, by regulations, margin under sub-section (1) for micro finance institutions generally or for a class of micro finance institutions or for any micro finance institution in particular, considering the size of their operations, risk associated with such operations and such other parameters, as it deems fit.

(3) A micro finance institution engaged in the activity referred in sub-section (1) shall convey to every client or borrower the annual percentage rate comprising of the annual interest rate, processing fees or any other charge or fee levied by the micro finance institution and incorporate the same distinctly and prominently in the loan document of the client or the borrower, in the sanction letter given to the client or borrower, as the case may be.

(4) A micro finance institution shall obtain from the Statutory Auditors a certificate that the margin available to, and realised by, the micro finance institution does not exceed the maximum limit specified by the Reserve Bank and that the micro finance institution has complied with the requirements of sub-sections (1) and (2).

27. (1) The Reserve Bank shall, at any time or on being directed so to do by the Central Government cause an inspection of any micro finance institution and its books and accounts and the Reserve Bank shall supply to the micro finance institution a copy of the report of such inspection.

Inspection.

(2) Without prejudice to the provisions of sub-section (1), the Reserve Bank may cause a scrutiny of the affairs of any micro finance institution and its books and accounts.

(3) A copy of the report of the scrutiny shall be furnished to the micro finance institution, if the micro finance institution makes a request for the same or if any adverse action is contemplated against the micro finance institution on the basis of the scrutiny.

(4) It shall be the duty of every person who is a director, trustee or a member of managing committee, manager, secretary or other officer or employee of the micro finance institution to produce before any officer authorised to make an inspection, all such books of account, records and other documents in custody or power of such person to furnish any statement or information relating to affairs of the micro finance institution, as the inspecting authority may require within such time, as may be specified.

(5) Any officer making an inspection under sub-section (1) or a scrutiny under sub-section (2) may examine on oath any director, trustee or a member of managing committee, manager, secretary or other officer or employee of the micro finance institution in relation to its business, and may administer an oath accordingly.

(6) If the Reserve Bank, after considering the report of inspection under sub-section (1) or scrutiny under sub-section (2), is of the view that the affairs of any micro finance institution are being conducted to the detriment of its clients, it may after giving such opportunity to the micro finance institution to make representation in connection with the report, take such action as it deems fit including removal of any officer, office bearer or managing committee of the micro finance institution or prohibiting the micro finance institution from providing micro finance services for such period as the Reserve Bank may deem fit, in the manner as may be specified by regulations.

28. (1) If on inspection or perusal of annual accounts or any returns submitted by any micro finance institution, the Reserve Bank is satisfied that activities of that micro finance institution are being conducted in a manner prejudicial to the interest of its clients or members of the self-help group (thrift group) or the micro finance institution itself, the Reserve Bank may pass a Cease and Desist order within sixty days of such inspection

Cease and Desist order.

directing such micro finance institution to cease and desist from providing the micro finance services, subject to such terms and conditions as may be specified in such order.

(2) In the Cease and Desist order, the Reserve Bank may, direct the micro finance institution not to sell, transfer, create any charge or mortgage or deal in any manner with its property and assets without prior written permission of the Reserve Bank during the subsistence of the Cease and Desist order.

(3) The Reserve Bank may, grant time to such micro finance institution for taking necessary steps to comply with the directions of the order passed under sub-section (1).

(4) The Reserve Bank may withdraw the Cease and Desist order issued under sub-section (1), if the Reserve Bank is satisfied that micro finance institution has complied with the directions issued under such order.

Closing or
restructuring
of business.

29. (1) No micro finance institution registered under this Act providing micro finance services or other services shall close its activity or amalgamate with other institutions, or take over any other business or its shareholding or demerge or divide, or restructure, or otherwise transfer the ownership or control of its activity of providing micro finance services unless a scheme thereof is approved by the Reserve Bank under this section.

(2) The micro finance institution shall formulate a scheme for any of the purposes specified in sub-section (1) and submit it to the Reserve Bank for approval.

(3) The Reserve Bank shall not approve any scheme submitted to it under sub-section (2), unless it is in public interest and has been sanctioned by the appropriate authority under the provisions of the law applicable to such micro finance institutions for the time being in force.

(4) The Reserve Bank may, by an order, approve the scheme under sub-section (2) subject to such terms and conditions as it may specify in the order.

(5) Where a scheme is approved by the Reserve Bank under sub-section (4), the Reserve Bank may, in the order under that sub-section or by another order, direct that on such date the micro finance institution shall stand restructured or cease to function and stand dissolved.

Winding up
petition or
other
application
for closure of
micro finance
activity.

30. (1) Without prejudice to anything contained in any other law for the time being in force applicable to winding up of any micro finance institution, the Reserve Bank, on being satisfied that a micro finance institution—

(a) is unable to pay its debt; or

(b) has by virtue of provisions of this Act become disqualified to carry on the activity of micro finance institution; or

(c) has failed to comply with any directives or orders issued by the Reserve Bank including the Cease and Desist order or otherwise; or

(d) the continuance of the micro finance institution is detrimental to public interest or to the interest of the clients of the institution,

may file an application for winding up or any other application by whatever name called for closure of its activity, before the appropriate authority or Court empowered to wind up the business or activity of the micro finance institution under the law applicable to such micro finance institution:

Provided that where the micro finance institution against whom application for winding up is filed is also engaged in any other activity, the concerned micro finance institution may be permitted to continue such activity and restrict the winding up or closure of the business only to the activity of providing micro finance services with the approval of the concerned authority or Court.

(2) Any authority or Court, empowered to wind up the business of the micro finance institution, may pass such orders as it deems fit.

Explanation.—For the purpose of this section, a micro finance institution shall be deemed to be unable to pay its debts, if it has refused or has failed to meet within five working days any lawful demand made at any of its officers or branches and the Reserve Bank certifies in writing that such institution is unable to pay its debt.

CHAPTER VIII

MICRO FINANCE DEVELOPMENT FUND

31. The Central Government may, after due appropriation made by Parliament by law in this behalf, grant such sum of money as that Government may think fit, to the Reserve Bank for being utilised for the purposes specified under sub-section (3) of section 32.

Grants by
Central
Government.

32. (1) The Reserve Bank shall constitute a fund to be called the Micro Finance Development Fund (hereafter called "the Fund") and there shall be credited thereto —

Fund.

(a) all Government grants received and fees payable under this Act;

(b) all sums that may be raised by the Reserve Bank from donors, institutions, other entities and public for the purpose of this Act;

(c) any interest or other income received out of investments made from the Fund under clause (c) of sub-section (3);

(d) the balance outstanding in the Micro Finance Development and Equity Fund maintained by the Reserve Bank, before the commencement of this Act.

(2) The Fund shall be managed by the Reserve Bank in such manner as may be specified by regulations duly approved by the Central Board of Directors of the Reserve Bank.

(3) The Fund shall be applied—

(a) to provide loans, refinance, grant, seed capital or any other micro credit facilities to any micro finance institution or any other agency which the Reserve Bank may by regulations specify;

(b) to give grants or loans for training and capacity building of institutions engaged in micro finance services and personnel engaged in promoting and providing micro finance services and meeting other expenditure related to such training and capacity building on such terms and conditions as may be specified by regulations;

(c) to invest in equity or any other form of capital or quasi-equity of a micro finance institution or any other agency on such terms and conditions as may be specified by regulations;

(d) to meet the necessary expenses in relation to collection, analysis, dissemination of information relating to micro finance, conduct of such research, experiments or studies as may be specified, and to design, promote, and propagate such practices as may be considered conducive to the growth of micro finance services;

(e) to meet any other expenses as may be required for the promotion of micro finance services as the Reserve Bank by regulations specify;

(f) to meet any other expenses (except salaries, allowances and other remuneration of officers and other employees) of the Reserve Bank in connection with discharge of its functions as may be specified by the regulations.

CHAPTER IX

REDRESSAL MECHANISM

Redressal of
Grievances
against micro
finance
institutions.

33. (1) The Reserve Bank shall formulate a scheme for redressal of grievances of beneficiaries of micro finance services against micro finance institutions and may entrust the functions of redressal of such grievance redressal to any Ombudsman established under any other scheme framed by the Reserve Bank for clients of banks, with powers to issue directions to micro finance institutions.

(2) Any scheme to be formulated under sub-section (1) shall provide for —

- (a) nature of grievance and complaints that may be entertained;
- (b) procedure for redressal of grievances and complaints;
- (c) any other matter that may be necessary for effective redressal of grievances.

CHAPTER X

OFFENCES AND PENALTIES

Contravention
of provisions
of Act, orders
and directions.

34. If any provision of this Act is contravened or any default is made in complying with any other requirement of this Act or of any rules, regulations or orders or directions given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with imprisonment for a term not exceeding two years or with fine which may extend to five lakh rupees and where, a contravention or default is a continuing one, with further fine, which may extend to ten thousand rupees for every day after the first, during which the contravention or default continues.

Giving false
information.

35. Whoever, in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provision of this Act, or any rule, regulation or order or direction made or given thereunder, wilfully makes a statement which is false in any material particulars knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five lakh rupees.

Offences by
micro finance
institutions.

36. (1) Where an offence under this Act is committed, the person who was in charge of, and was responsible to, the micro finance institution for the conduct of business of the micro finance institution, as well as the micro finance institution itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a micro finance institution and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any person who is or was a director, trustee, member of the managing committee, manager, secretary or other officer or employee of the micro finance institution when the offence is or was committed, such person shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or principal office of the micro finance institution, is situated.

Powers of
Reserve Bank
to impose
penalty.

37. (1) Notwithstanding anything to the contrary contained in section 34, the Reserve Bank may impose monetary penalty, which may extend up to five lakh rupees where the contravention is of the nature referred to in section 34.

(2) For the purpose of imposing penalty under this section, the Reserve Bank shall serve notice on the micro finance institution requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such micro finance institution.

(3) Any penalty imposed by the Reserve Bank under sub-section (1) shall be payable within a period of thirty days from the date on which the notice by the Reserve Bank demanding payment of the amount is served on the micro finance institution and the orders of the Reserve Bank shall be enforceable in the same manner as if it were a decree made by the civil court in a civil suit.

(4) All sums realised by imposition of penalties under this section shall be credited to the Consolidated Fund of India.

38. No civil court shall have jurisdiction against any micro finance institution in respect of any contravention or default for which any penalty has been imposed by the Reserve Bank.

Bar of civil court jurisdiction.

2 of 1974.

39. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence connected with or arising out of acceptance of thrift or repayment thereof, shall be a cognizable offence.

Certain offences to be cognizable.

40. (1) No court shall take cognizance of any offence punishable under this Act or rules or regulations made thereunder except upon a complaint made in writing by an officer or other person authorised, by general or special order, by the Reserve Bank:

Cognizance of offences.

Provided that no such officer or other person shall be competent to file the complaint unless he is generally or specially authorised in writing by the Reserve Bank.

(2) No court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

2 of 1974.

(3) Notwithstanding anything to contrary contained in the Code of Criminal Procedure, 1973, a court, if it considers fit to do so, may dispense with the attendance of the officer of the Reserve Bank or other person filing the complaint on its behalf, but the court in its discretion at any stage of the proceeding, may direct personal attendance of such officer or the person.

41. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied for, or towards payment of, the cost of the proceeding.

Application of fine.

CHAPTER XI

DELEGATION OF POWERS

42. (1) The Central Government, in consultation with the Reserve Bank may, by notification, delegate any of the powers of the Reserve Bank conferred under this Act, except under sections 30, 37 and 49, to the National Bank or any agency under the control of the Central Government in respect of any micro finance institution or a class of micro finance institutions or micro finance institutions generally, subject to such conditions as it deems fit.

Delegation of certain powers of Reserve Bank to National Bank.

(2) Any notification issued under sub-section (1) shall specify the specific powers under various provisions of this Act which are delegated to the National Bank or any agency under the control of the Central Government.

(3) The National Bank or agency under the Control of the Central Government shall exercise the powers delegated by the Central Government subject to such conditions as may be specified in the notification under sub-section (1) and such directives and guidelines which may be issued by the Reserve Bank from time to time.

(4) Any action taken by the National Bank or agency under the Control of the Central Government pursuant to the delegation of powers under sub-section (1) shall be deemed to

be the action of the Reserve Bank and provisions contained in section 17 for appeal shall be applicable.

CHAPTER XII

MISCELLANEOUS

Preference to members or clients of micro finance institution in repayment.

43. In the event of any micro finance institution making default in repayment of thrift to its members or clients who had made a contribution to thrift, all the workmen shall be paid their dues in priority to all others and thereafter all such members or clients of such micro finance institution shall have a preference in repayment, and shall have the first charge over the assets of the micro finance institution and specified unencumbered securities, if any, referred to in sub-section (3) of section 18.

Power of Central Government to issue directions.

44. (1) The Central Government may issue directions to the Reserve Bank, the Micro Finance Development Council or any State Micro Finance Council on matters of policy and implementation of schemes and other measures as may be necessary for orderly growth and development of micro finance institutions for promoting financial inclusion.

(2) Without prejudice to the provisions of sub-section (1), the Reserve Bank, the Micro Finance Development Council or any State Micro Finance Council shall, in exercise of the powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Reserve Bank, the Micro Finance Development Council or any State Micro Finance Council shall as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government, whether a question is of policy or not, shall be final.

Power of Central Government to call for information, statements, etc.

45. The Central Government may, in consultation with the Reserve Bank from time to time, require the furnishing of information, returns, statements and such other particulars in regard to micro finance institutions in such form and in such manner as may be prescribed, and the micro finance institution shall furnish to the Central Government such information, returns, statements and particulars.

Power to exempt class or classes of micro finance institutions from provisions of this Act.

46. (1) The Central Government may, in the public interest, by notification, direct that all or any of the provisions of this Act,—

(a) shall not apply to such class or classes of micro finance institutions;

(b) shall apply to the class or classes of micro finance institutions with such exceptions, modifications and adaptations, as may be specified in the notification.

(2) A copy of every notification issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both Houses.

Act to have overriding effect.

47. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

48. No suit or other legal proceedings shall lie against the Reserve Bank, or any director, or any officer, or other employee of the Reserve Bank, or any other person or agency authorised by the Reserve Bank, to discharge any functions under this Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or of any other law or provision having the force of law.

Protection of
action taken
under the Act.

49. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the higher amount for such special purposes under sub-clause (A) of clause (j) of sub-section (1) of section 2;

(b) the manner of providing micro finance services under clause (j) of section 2;

(c) the fees and allowances receivable by members of the Council under sub-section (2) of section 5;

(d) the time and place and the rules of procedure for transaction of business at the meetings of the Council under section 6;

(e) the term of office and allowances of Members of the State Micro Finance Council under section 9;

(f) authority before whom appeal may be preferred under sub-section (1), the form and the manner of filing of appeal under sub-section (2) of section 17;

(g) such other functions to be performed by the Reserve Bank under clause (o) of sub-section (2) of section 24;

(h) the form and manner of furnishing of returns, statements and other particulars under section 45;

(i) any other matter which is to be, or may be, prescribed.

50. (1) The Reserve Bank, with the previous approval of the Central Government may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to
make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the other terms and conditions of remittance of funds under sub-clause (D) of clause (j) of sub-section (1) of section 2;

(b) the rules of procedure to be observed by the District Micro Finance Committee under sub-section (2) of section 10;

(c) the form and manner of submitting quarterly report by the District Micro Finance Committee to the Reserve Bank under section 12;

(d) the form and manner and fee payable for making an application for registration by the micro finance institution to the Reserve Bank under sub-section (1) of section 14;

(e) other higher amount of net owned fund under clause (c) of sub-section (1) of section 15;

(f) the unencumbered securities for the purpose of investment under sub-section (3) of section 18;

(g) the form in which the balance sheet, profit and loss account or an income and expenditure account shall be prepared under section 19;

- (h) qualifications and experience of a person duly qualified under section 20;
- (i) the form and the manner of filing return under section 23;
- (j) the maximum limit of the margin and the annual percentage rate to be charged by the micro finance institution for providing micro credit facilities to its clients under clause (d) of sub-section (2) of section 24;
- (k) the procedure for removal of any officer, office bearer or managing committee of the micro finance institution or for prohibiting the micro finance institution from providing micro finance services for such period as the Reserve Bank may deem fit under sub-section (6) of section 27;
- (l) the manner of management of the Fund by the Reserve Bank under sub-section (2) of section 32;
- (m) providing loans, refinance, grants, seed capital or any other financial assistance to any micro finance institution or any other agency under clause (a) of sub-section (3) of section 32;
- (n) the terms and conditions subject to which grants or loans shall be given by the Reserve Bank under clause (b) of sub-section (3) of section 32;
- (o) the terms and conditions subject to which the investment in equity or any other form of capital or quasi-equity of a micro finance institution shall be made under clause (c) of sub-section (3) of section 32;
- (p) any other expenses as may be required for the promotion of micro finance services under clause (e) of sub-section (3) of section 32;
- (q) the other expenses (except salaries, allowances and other remuneration of officers and other employees) of the Reserve Bank under clause (f) of sub-section (3) of section 32;
- (r) any other matter which is required to be, or may be, specified by regulations.

Rules,
regulations
and orders to
be laid before
Parliament.

51. Every rule or order made by the Central Government and every regulation made by the Reserve Bank and any order of exemption made under section 44 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or order or both Houses agree that the rule, regulation or order should not be made, the rule, regulation or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or order.

Power to
remove
difficulties.

52. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The banking system has achieved significant growth in terms of average population covered per bank office and has also been able to reduce the levels of credit gaps in the economy. In spite of such growth, many of the poor households still do not have access to basic financial services such as savings, credit and remittances and such financial exclusion faced by such people results in discrimination and denial of equal opportunities to them. Financial inclusion is an important priority of the Central Government.

2. There are many societies, companies, trusts and bodies corporate and such other institutions which are engaged in providing micro finance services to the poor households as a complementary to the banking system. Since these institutions lack a formal statutory framework for providing such micro finance services, it is expedient to provide a statutory framework for the promotion, development, regulation and orderly growth of such micro finance institutions and thereby facilitate financial inclusion. It is, therefore, considered necessary to enact a law for the said purpose.

3. In pursuance of the Budget speech for the year 2006-07, the Central Government introduced the Micro Financial Sector (Development and Regulation) Bill, 2007 in the Lok Sabha on 20th March, 2007. The Bill was referred to the Departmental Related Parliamentary Standing Committee on the Ministry of Finance. However, on account of the dissolution of the Lok Sabha, the Bill lapsed.

4. It has now been decided to introduce the Micro Finance Institutions (Development and Regulation) Bill, 2012, with certain modifications. The Micro Finance Institutions (Development and Regulation) Bill, 2012, *inter alia*, provides for the following, namely:—

(a) regulation of micro finance institutions providing micro finance services, such as micro credit facilities, thrift, pension or insurance services and remittance of funds and prohibit micro finance institutions from carrying on the activities of micro finance services without registration with the Reserve Bank but allows the existing non-banking finance companies registered under the Reserve Bank of India Act, 1934 to continue such services without registration;

(b) constitution of the Micro Finance Development Council to advise the Central Government on formulation of policies, schemes and other measures required to be taken in the interest of orderly growth and development of micro finance institutions and advice on such other matters as specified in sub-clause (2) of clause 7 of the Bill;

(c) establishment of State Micro Finance Council in each State or for two or more States, considering the extent of micro finance activities in such States and such Council shall report to the Central Government on the implementation of the measures undertaken for the promotion and development of micro finance institutions and shall be responsible for the matters specified in items (a) to (d) of sub-clause (3) of clause 8 and discharge such other functions as may be entrusted by the Central Government;

(d) establishment of a District Micro Finance Committee in each District, to be headed by the Collector of the District or any officer not below the rank of Additional Collector, to review the growth and development of micro finance activities in the district, monitor over-indebtedness and methods of recovery used by the micro finance institutions and discharge the functions specified in clause 11;

(e) make provision for cancellation of registration for failure to carry on business of providing micro finance services, contravention of the conditions of registration or directions issued by the Reserve Bank or failure to comply with the directives stipulated in Cease and Desist order;

(f) confer power upon the Reserve Bank to,—

(i) specify the maximum limit of the margin and annual percentage rate which can be charged by any micro finance institution, sector related benchmarks

and performance standards pertaining to methods of operation, fair and reasonable methods of recovery of loan advanced by the micro finance institutions;

(ii) cause inspection of the accounts of the micro finance institutions and take necessary action including passing of the Cease and Desist order and to impose monetary penalty for contravention or non-compliance of the provisions of the proposed legislation;

(g) prohibit micro finance institutions to close or restructure their activities without the approval of the Reserve Bank;

(h) enable the Reserve Bank to file winding up petition or application for the closure of the activities of the micro finance institution if such institution is unable to pay its debt or fails to comply with the directives of the Reserve Bank or the conditions of the registration or continuance of such institution is detrimental to the public interest or interests of its clients;

(i) make provisions for constitution of the Micro Finance Development Fund to be applied for the purpose of providing loans, grants or seed capital as also for training of personnel engaged in micro finance institution services;

(j) make provisions for formulation of schemes for redressal of grievances of the beneficiaries of the micro finance services;

(k) provide for levy of penalties for contravention of the provisions of the proposed legislation or default made in complying with any other requirement of the proposed legislation or giving false information.

4. The Notes on clauses explain in detail the various provisions contained in the Bill.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 16th May, 2012.

PRANAB MUKHERJEE.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA**

[Copy of letter No. 13/01/2006-AC, dated 17 May, 2012 from Shri Pranab Mukherjee, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Micro Finance Institutions (Development and Regulation) Bill, 2012 has recommended the introduction and consideration of the said Bill in Lok Sabha under article 117(1) and (3) of the Constitution of India.

Notes on clauses

Clause 2.—This clause defines certain terms and expressions used in the Bill, namely, "annual percentage rate", "co-operative society", "District Micro Finance Committee", "micro credit facilities", "micro finance institution", "micro finance services", "State Micro Finance Council" and "thrift".

Clause 3.—This clause relates to constitution of Micro Finance Development Council. It provides that the Central Government may, by notification, constitute a Council to be known as the Micro Finance Development Council to discharge the functions assigned to it under this Act.

Clause 4.—This clause relates to composition of council. It provides that the council shall consist of—(a) a person of eminence, with experience in the field of banking, rural credit and micro finance, to be nominated by the Central Government—Chairperson; (b) four officers, one each from the Ministry or the Department of the Central Government having the administrative control of Finance, Rural Development, Women and Child Development and Housing and Urban Poverty Alleviation, not below the rank of Joint Secretary to the Government of India, to be nominated by the Central Government—*ex officio* Members; (c) an officer of the Reserve Bank, not below the rank of an Executive Director, to be nominated by the Reserve Bank—*ex officio* Member; (d) an officer of the Small Industries Development Bank of India, not below the rank of an Executive Director, to be nominated by the Small Industries Development Bank of India—*ex officio* Member; (e) an officer of the National Bank dealing with micro finance, not below the rank of an Executive Director, to be nominated by the National Bank—*ex officio* Member; (f) an officer of the National Housing Bank, not below the rank of an Executive Director, to be nominated by the National Housing Bank—*ex officio* Member; (g) not more than four persons, of whom at least two shall be women, to be nominated by the Central Government, in consultation with the Reserve Bank from amongst persons with experience in the field of banking, rural credit or micro finance or the representatives of micro finance institutions or scheduled banks or any other institution providing micro finance services—Members.

Clause 5.—This clause provides terms of office and allowances of members of Council. Sub-clause (1) of this clause provides that a member of the council shall hold office for a period of three years and shall be eligible for reappointment. Sub-clause (2) of this clause provides that members of the council shall receive such fees and allowances as may be prescribed.

Clause 6.—This clause relates to the meetings of council. It provides that the council shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

Clause 7.—This clause deals with the functions of council. Sub-clause (1) of this clause provides that the Council shall advise the Central Government on formulation of policies and measures to be undertaken for orderly growth and development of micro finance institutions and schemes to be framed therefor. Sub-clause (2) of this clause provides that without prejudice to the provisions contained in sub-section (1), the Council may advise the Central Government on formulation of policies, measures to be taken and schemes to be framed for—(a) the adoption of any innovations and use of technology in providing micro finance services; (b) establishing credit information bureaus for creation of data base of clients availing micro finance services from various micro finance institutions; (c) the working of grievance redressal mechanisms to protect the interest of clients of micro finance services; or (d) any other matter which may be referred to the Council by the Central Government for protecting the interest of clients availing micro finance services and in the interest of promotion of financial inclusion.

Clause 8.—This clause relates to the establishment and functions of State Micro Finance Council. Sub-clause (1) of this clause provides that the Central Government may, by notification, establish a State Micro Finance Council for Micro Finance Services in each

State and considering the extent of micro finance activities in the States, establish such a Micro Finance Council for two or more States. Sub-clause (2) of this clause provides that each State Micro Finance Council shall consist of—(a) two nominees of the concerned State or States, one of whom to be designated by the Central Government as Chairperson; (b) a representative of the Convener Bank of the State Level Bankers' Committee for any State or States; (c) one person representing the micro finance institutions operating in the State nominated by the Central Government; and (d) one person having experience in the field of micro finance, nominated by the Reserve Bank.

Sub-clause (3) of the said clause provides that every State Micro Finance Council shall be responsible to—(a) coordinate the activities of the District Micro Finance Committees in the State; (b) review growth and development of micro finance activities in the State; (c) monitor over-indebtedness, if any, caused by micro finance institutions in the State; and (d) monitor whether methods of recovery used by micro finance institutions are in accordance with the guidelines made by the Reserve Bank and to report to the Reserve Bank in respect of the violations, if any.

Sub-clause (4) of this clause provides that the Central Government may, by notification, entrust such other functions of the Council under section 7 to any State Micro Finance Council subject to such terms and conditions as it deems fit. Sub-clause (5) of this clause provides that each State Micro Finance Council shall submit a quarterly report to the Central Government on the implementation of the measures undertaken for the promotion and development of the micro finance institutions in the State including the matters of—(a) micro credit activities undertaken by micro finance institutions, over-indebtedness of clients, if any, and consequent large scale defaults; (b) recovery practices adopted by micro finance institutions whether fair and reasonable; (c) working of the grievance redressal mechanism; (d) overall assessment of the impact of measures undertaken and schemes framed; (e) any other matter which the State Micro Finance Council deems necessary to bring to the notice of the Central Government.

Clause 9.—This clause deals with the term of office and allowances of State Micro Finance Council. A member of the State Micro Finance Council shall hold office for such term not exceeding three years and receive such fees and allowances as may be prescribed.

Clause 10.—This clause provides for constitution of District Micro Finance Committees. Sub-clause (1) of this clause provides that the Reserve Bank may, constitute a District Micro Finance Committee in each district, to be headed by the Collector or an officer not below the rank of Additional Collector in that district in such manner as may be specified by regulations. Sub-clause (2) of this clause provides that the District Micro Finance Committee shall meet at such time and place, as the Collector may direct, at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be specified by regulations. However, the representatives of the Lead Bank of the District, representative of the National Bank in the district, a representative of micro finance institutions operating in the district and beneficiaries of micro finance services shall be invited to the meetings of the District Micro Finance Committees. This clause clarifies that the "Lead Bank" of the District, for the purposes of this section, means a bank to which a district — is assigned as per the Lead Bank Scheme of the Reserve Bank of India.

Clause 11.—This clause relates to the functions of the District Micro Finance Committee. It provides that the District Micro Finance Committee shall discharge the functions, namely:—(a) to review growth and development of micro finance activities in the district; (b) to monitor over-indebtedness, if any, caused by micro finance institutions in the district; and (c) to monitor whether methods of recovery used by micro finance institutions are in accordance with the guidelines made by the Reserve Bank and to report to the Reserve Bank in respect of the violations, if any.

Clause 12.—This clause deals with the report of District Micro Finance Committees. It provides that each District Micro Finance Committees shall submit a quarterly report to

the Reserve Bank in such form and manner as may be specified and forward its copy to the State Micro Finance Council.

Clause 13.—This clause provides that no micro finance services to be provided without registration. It provides that notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, no micro finance institution after the commencement of this Act, shall commence or carry on the activity of providing micro finance services without obtaining a certificate of registration under this Act.

Clause 14.—This clause relates to application for registration. Sub-clause (1) of this clause provides that a micro finance institution, which intends to carry on the activity of providing micro finance services, shall make an application for registration to the Reserve Bank in such form and manner along with such fee as may be specified by regulations. However, any micro finance institution, in existence at the commencement of this Act, engaged in providing micro finance services before such commencement, shall within three months from the date of such commencement, make an application to the Reserve Bank for registration in the form and manner as specified under sub-section (1). It further provides that any micro finance institution, in existence at the commencement of this Act, engaged in providing micro finance services before such commencement, may continue to carry on its activity of providing micro finance services till the disposal of such application. Sub-clause (2) of this clause provides that notwithstanding anything contained in sub-section (1), any company registered as a non-banking finance company with the Reserve Bank of India under the provisions of Chapter III-B of the Reserve Bank of India Act, 1934, and engaged in extending micro finance services shall continue to do so and comply with the terms and conditions of its registration and any rules, regulations, directives and guidelines issued by the Reserve Bank to the non-banking finance companies, from time to time and also such other rules, regulations, directives and guidelines of the Reserve Bank as may be made or issued by the Reserve Bank for or to the micro finance institutions, under this Act.

Clause 15.—This clause relates to the grant of certificate of registration. Sub-clause (1) of this clause provides that the Reserve Bank may, for the purpose of grant of certificate of registration, satisfy itself that—(a) the general character or management of the micro finance institution is not or is not likely to be prejudicial to the interest of the present or future clients availing micro finance services; (b) the micro finance institution is engaged in or intends to engage in providing micro finance services; (c) the applicant has a net owned fund, created out of contributions to capital, reserves or grants or donations received by it, of at least five lakh rupees or such other higher amounts as may be specified by regulations. This clause also clarifies that "net owned fund" shall have, *mutatis mutandis*, the same meaning as assigned to it in the "Explanation" to sub-section (7) of section 45-IA of the Reserve Bank of India Act, 1934. Sub-clause (2) of this clause provides that the Reserve Bank may, after being satisfied that the conditions referred to in sub-section (1) are fulfilled, grant a certificate of registration to the micro finance institution to commence or continue to carry on the business of providing micro finance services subject to such conditions as it may consider necessary to impose. However, no application for registration shall be rejected unless the applicant has been given an opportunity of being heard. Sub-clause (3) of this clause provides that save as otherwise provided in this Act, every micro finance institution registered under this Act shall provide micro finance services to its clients in accordance with provisions of this Act and rules and regulations made thereunder. Sub-clause (4) of this clause provides that every micro finance institution shall give preference for providing micro credit facility to the rural and urban poor and other disadvantaged sections of the people.

Clause 16.—This clause relates to power of the Reserve Bank to cancel the certificate of registration. Sub-clause (1) of this clause provides that the Reserve Bank may, by order, cancel the certificate of registration granted to a micro finance institution under section 15, if such micro finance institution—(i) ceases to carry on the activity of providing micro finance services; or (ii) has failed to comply with any of the conditions subject to which the

certificate of registration has been granted under sub-section (2) of section 15; or (iii) fails to comply with any direction issued by the Reserve Bank under the provisions of this Act; or (iv) fails to submit or offer for inspection of its books of account and other relevant documents under sub-section (4) of section 27; or (v) fails to comply with directives stipulated in the Cease and Desist order passed under section 28. Sub-clause (2) of this clause provides that before cancelling the certificate of registration of any micro finance institution under sub-section (1), the Reserve Bank shall provide a reasonable opportunity of being heard to such micro finance institution.

Clause 17.—This clause relates to appeals by micro finance institution in certain cases. Sub-clause (1) of this clause provides that a micro finance institution aggrieved by an order of rejection of an application for grant of certificate of registration under section 15, or cancellation of certificate of registration under section 16, or any action taken by the Reserve Bank under sub-section (6) of section 27, may prefer an appeal to the Central Government or such other authority, as may be prescribed, within a period of sixty days from the date on which such order is communicated to the micro finance institution. Sub-clause (2) of this clause provides that the appeal shall be filed in such form and in such manner, as may be prescribed. Sub-clause (3) of this clause provides that the decision of the Central Government or the authority, where an appeal has been preferred under sub-section (1), shall be final. However, before making any order of rejection of appeal, such micro finance institution shall be given a reasonable opportunity of being heard.

Clause 18.—This clause provides for the obligation of the micro finance institution to create reserve fund. Sub-clause (1) of this clause provides that every micro finance institution registered with the Reserve Bank under this Act shall create a reserve fund and transfer therein a sum, representing such percentage, as may be specified by the Reserve Bank, of its net profit or surplus realised by providing micro finance services every year as disclosed in the profit and loss account or income and expenditure account and before surplus is utilised for any other purpose. However, nothing contained in this sub-section shall apply to a non-banking finance company registered with the Reserve Bank which is maintaining such reserve fund pursuant to any provisions of the Reserve Bank of India Act, 1934 or any directions or regulations issued thereunder. Sub-clause (2) of this clause provides that no appropriation of any sum from the reserve fund shall be made by the micro finance institution, except for the purpose, as may be specified by the Reserve Bank from time to time, and every such appropriation shall be reported to the Reserve Bank within twenty-one days from the date of such appropriation. Sub-clause (3) of this clause provides that the Reserve Bank may, in the public interest or in the interest of clients of any micro finance institution, direct any micro finance institution or any class of micro finance institutions to invest the whole or part of such reserve fund in such unencumbered securities, as it may, by regulations specify.

Clause 19.—This clause relates to accounts and balance sheet of micro finance institution. It provides that at the close of each financial year, every micro finance institution shall prepare, with reference to that year, in respect of all services transacted by it, a balance sheet, profit and loss account or an income and expenditure account as on the last working day of the financial year, in such form as may be specified by regulations.

Clause 20.—This clause provides for audit of the accounts of micro finance institution. It provides that the balance sheet, profit and loss account or an income and expenditure account of the micro finance institution prepared in accordance with section 19 shall be audited by a person duly qualified under law for the time being in force to be an auditor of companies formed and registered under the Companies Act, 1956, or an auditor from the list of Chartered Accountants or other qualified persons approved by the Reserve Bank. This clause clarifies "person duly qualified", for the purpose of this section, means a person having qualification and experience, as may be specified by regulations.

Clause 21.—This clause relates to special audit of the micro finance institution. Sub-clause (1) of this clause provides that without prejudice to the provisions contained in

section 20, where the Reserve Bank is of the opinion that it is necessary in the public interest or in the interest of its clients or for the purpose of proper assessment of the records and books of account of the micro finance institutions, so to do, it may at any time, by order, direct a special audit of the accounts of such micro finance institution, for such transaction or class of transactions conducted by it or for such period or periods, as may be specified in the order and may be the same or a different order either appoint a person duly qualified under any law for the time being in force to be an auditor of companies and direct that the auditor shall comply with such directions as it may specify in that order and make a report of such audit to the Reserve Bank and forward a copy thereof to the micro finance institutions. Sub-clause (2) of this clause provides that the expenses of, or incidental to the special audit, specified in the order made by the Reserve Bank, shall be borne by the micro finance institutions.

Clause 22.—This clause relates to powers of the auditors. Sub-clause (1) of this clause provides that the auditor appointed for audit under section 20 or for special audit under section 21 shall have the powers of, exercise the functions vested in, discharge the duties and be subject to the liabilities and penalties imposed on, the auditors of companies under section 227 of the Companies Act, 1956 and the auditors, if any, appointed under any law establishing, constituting or forming the micro finance institution concerned. Sub-clause (2) of this clause provides that without prejudice to the provisions contained in sub-section (1), the auditor shall report—(a) whether or not, the information and explanations required have been found to be satisfactory; (b) whether the profit and loss account or income and expenditure account, as the case may be, shows the true balance of profit or income or loss for the period covered by such account; (c) any other matter including defaults in re-payment of thrift or interest thereon which the auditor considers necessary to be brought to the notice of eligible clients and the Reserve Bank to ensure good governance and transparency in the business of the micro finance institution concerned. Sub-clause (3) of this clause provides that where any of the matters referred to in clauses (a) and (b) of sub-section (2) is answered in negative or with qualification, the auditor's report shall state the reasons for the same.

Clause 23.—This clause relates to returns to be filed by micro finance institutions. This clause provides that save as otherwise provided in this Act, every micro finance institution, at the commencement of this Act, shall, within ninety days from the date of such commencement, file with the Reserve Bank a return containing particulars of its activities in such form and manner and thereafter at such intervals as may be specified by regulations.

Clause 24.—This clause relates to functions and powers of the Reserve Bank. Sub-clause (1) of this clause provides that the Reserve Bank shall regulate, promote and ensure orderly growth of the micro finance institutions and take measures as it deems fit, for the purpose of promoting financial inclusion through such institutions. Sub-clause (2) of this clause provides that without prejudice to the generality of the foregoing provisions contained in sub-section (1), the powers and functions shall include—(a) grant of certificate of registration to the applicant-micro finance institution under section 15 or cancellation of such certificate under section 16; (b) making of schemes for the orderly growth of the micro finance services provided by micro finance institutions so as to ensure greater transparency, effective management, good governance in an efficient manner; (c) specifying the maximum limit of the margin and the annual percentage rate to be charged by the micro finance institution for providing micro credit facilities to its clients; (d) specifying the sector related benchmarks and performance standards pertaining to methods of operation, fair and reasonable methods of recovery, management and governance including model codes for conduct of activities of micro finance institutions; (e) facilitating the development of credit rating norms or rating norms for other purposes for micro finance institutions; (f) specifying the form and manner of books of account to be maintained by micro finance institutions; (g) specifying the form and manner of accounting of business operations of micro finance institutions and auditing standards relating thereto; (h) calling for information and data from micro finance institutions for maintaining an appropriate database in the public domain

relating to micro finance services and disseminating the same through a national dissemination network; (i) constituting a Micro Finance Development Fund and to apply it for the purposes as provided in section 32; (j) promoting development of micro finance institutions, engaged in micro finance services through training and capacity building measures; (k) promoting customer education of all institutions engaged in micro finance services for greater awareness and for economic empowerment of micro finance clients; (l) supporting research, field research, documentation and dissemination thereof relating to micro finance sector; (m) coordinating with other agencies for orderly growth and development of institutions engaged in the micro finance services; (n) documenting and disseminating information relating to best practices with a view to ensuring provision of micro finance services at an affordable cost to eligible clients; and (o) perform such other functions as may be prescribed.

Clause 25.—This clause relates to power of the Reserve Bank to issue directions to micro finance institutions. Sub-clause (1) of this clause provides that if the Reserve Bank is satisfied that, in the public interest or to prevent the affairs of any micro finance institution being conducted in a manner detrimental to the interest of the clients availing micro finance services or in a manner prejudicial to the interest of the micro finance institution, it is necessary or expedient so to do, it may give directions to a class or classes or all micro finance institutions generally, as the case may be, and such micro finance institution shall be bound to follow the policy so determined and the directions so issued. Sub-clause (2) of this clause provides that in particular and without prejudice to the generality of the foregoing powers, such directions may provide for all or any of the following matters, namely:—

(a) extent of deployment of assets for providing micro finance services and proportion of clients availing such services, necessary to classify any institution as micro finance institution;

(b) ceiling on amount of micro credit facilities and the number of individual clients to whom such micro credit facilities may be provided by any micro finance institution;

(c) tenure of micro credit facilities given to clients and other terms and conditions for which micro credit facilities, can be given, margin caps and periodicity of repayment schedules;

(d) levy of processing fees, interest, life insurance premium and other terms relating to micro credit facilities including the ceiling on the percentage of margin to be maintained by a micro finance institution;

(e) the maximum annual percentage rate which may be charged by a micro finance institution on the micro credit facilities granted to any client;

(f) the locations where micro credit facilities may be sanctioned and disbursed by micro finance institutions;

(g) micro finance institutions to become members of Credit Information Bureaus that may be set up for the micro finance sector;

(h) observing code of conduct formulated by any organisation of micro finance institution recognised by the Reserve Bank and setting up of grievance redressal mechanism for their clients as required by such organisation;

(i) a Client Protection Code and its acceptance and observance by micro finance institutions;

(j) micro finance institutions to achieve better control, simplification of procedures and reduction of costs by use of information technology;

(k) the minimum net worth of micro finance institutions considering their size of operations and other relevant parameters;

(l) norms for corporate governance to be observed by micro finance institutions;

(m) prudential norms relating to income recognition, accounting standards, provisioning for bad and doubtful debts, capital adequacy based on risk weights for assets and deployment of funds;

(n) disclosure of assignments or securitisation of assets as also assets assigned with recourse or with arrangement as agent for collection of loan instalments;

(o) raising of preference share capital or other capital by micro finance institution;

(p) grant of recognition to any self Regulatory Organisation of micro finance institutions for efficient conduct of the business of micro finance institution; and

(q) such other directions as may be specified by regulations.

Clause 26.—This clause relates to the ceiling of margin of micro finance institution. Sub-clause (1) of this clause provides that a micro finance institution engaged in the activity of providing micro credit facilities shall not collect a margin which is in excess of the maximum limit thereof, as may be specified from time to time by the Reserve Bank, for a micro finance institution or a class of micro finance institutions. Sub-clause (2) of this clause provides that the Reserve Bank may specify, by regulations, margin under sub-section (1) for micro finance institutions generally or for a class of micro finance institutions or for any micro finance institution in particular, considering the size of their operations, risk associated with such operations and such other parameters, as it deems fit. Sub-clause (3) of this clause provides that a micro finance institution engaged in the activity referred in sub-section (1) shall convey to every client or borrower the annual percentage rate comprising of the annual interest rate, processing fees or any other charge or fee levied by the micro finance institution and incorporate the same distinctly and prominently in the loan document of the client or the borrower, in the sanction letter given to the client or borrower, as the case may be. Sub-clause (4) of this clause provides that a micro finance institution shall obtain from the Statutory Auditors a certificate that the margin available to, and realised by, the micro finance institution does not exceed the maximum limit specified by the Reserve Bank and that the micro finance institution has complied with the requirements of sub-sections (1) and (2).

Clause 27.—This clause relates to inspection of micro finance institution. Sub-clause (1) of this clause provides that the Reserve Bank shall, at any time or on being directed so to do by the Central Government cause an inspection of any micro finance institution and its books and accounts and the Reserve Bank shall supply to the micro finance institution a copy of the report of such inspection. Sub-clause (2) of this clause provides that without prejudice to the provisions of sub-section (1), the Reserve Bank may cause a scrutiny of the affairs of any micro finance institution and its books and accounts. Sub-clause (3) of this clause provides that a copy of the report of the scrutiny shall be furnished to the micro finance institution, if the micro finance institution makes a request for the same or if any adverse action is contemplated against the micro finance institution on the basis of the scrutiny. Sub-clause (4) of this clause provides that it shall be the duty of every person who is a director, trustee or a member of managing committee, manager, secretary or other officer or employee of the micro finance institution to produce before any officer authorised to make an inspection, all such books of account, records and other documents in custody or power of such person to furnish any statement or information relating to affairs of the micro finance institution, as the inspecting authority may require within such time, as may be specified.

Sub-clause (5) of this clause provides that any officer making an inspection under sub-section (1) or a scrutiny under sub-section (2) may examine on an oath any director, trustee or a member of managing committee, manager, secretary or other officer or employee of the micro finance institution in relation to its business, and may administer an oath accordingly. Sub-clause (6) of this clause provides that if the Reserve Bank, after considering the report of inspection under sub-section (1) or scrutiny under sub-section (2), is of the view that the affairs of any micro finance institution are being conducted to the detriment of

its clients, it may after giving such opportunity to the micro finance institution to make representation in connection with the report, take such action as it deems fit including removal of any officer, office bearer or managing committee of the micro finance institution or prohibiting the micro finance institution from providing micro finance services for such period as the Reserve Bank may deem fit, in the manner as may be specified by regulations.

Clause 28.—This clause relates to Cease and Desist order to be issued by the Reserve Bank. Sub-clause (1) of this clause provides that if on inspection or perusal of annual accounts or any returns submitted by any micro finance institution, the Reserve Bank is satisfied that activities of that micro finance institution are being conducted in a manner prejudicial to the interest of its clients or members of the self-help group (thrift group) or the micro finance institution itself, the Reserve Bank may pass a Cease and Desist order within sixty days of such inspection directing such micro finance institution to Cease and Desist from providing the micro finance services, subject to such terms and conditions as may be specified in such order. Sub-clause (2) of this clause provides that in the Cease and Desist order, the Reserve Bank may, direct the micro finance institution not to sell, transfer, create any charge or mortgage or deal in any manner with its property and assets without prior written permission of the Reserve Bank during the subsistence of the Cease and Desist order. Sub-clause (3) of this clause provides that the Reserve Bank may, grant time to such micro finance institution for taking necessary steps to comply with the directions of the order passed under sub-section (1). Sub-clause (4) of this clause provides that the Reserve Bank may withdraw the Cease and Desist order issued under sub-section (1), if the Reserve Bank is satisfied that micro finance institution has complied with the directions issued under such order.

Clause 29.—This clause deals with the closing or restructuring of business of micro finance institution. Sub-clause (1) of this clause provides that no micro finance institution registered under this Act providing micro finance services or other services shall close its activity or amalgamate with other institutions, or take over any other business or its shareholding or demerge or divide, or restructure, or otherwise transfer the ownership or control of its activity of providing micro finance services unless a scheme thereof is approved by the Reserve Bank under this section. Sub-clause (2) of this clause provides that the micro finance institution shall formulate a scheme for any of the purposes specified in sub-section (1) and submit it to the Reserve Bank for approval. Sub-clause (3) of this clause provides that the Reserve Bank shall not approve any Scheme submitted to it under sub-section (2), unless it is in public interest and has been sanctioned by the appropriate authority under the provisions of the law applicable to such micro finance institutions for the time being in force. Sub-clause (4) of this clause provides that the Reserve Bank may, by an order, approve the scheme under sub-section (2) subject to such terms and conditions as it may specify in the order. Sub-clause (5) of this clause provides that where a scheme is approved by the Reserve Bank under sub-section (4), the Reserve Bank may, in the order under that sub-section or by another order, direct that on such date the micro finance institution shall stand restructured or cease to function and stand dissolved.

Clause 30.—This clause relates to filing winding up petitions or other applications for closure of micro finance activity. Sub-clause (1) of this clause provides that without prejudice to anything contained in any other law for the time being in force applicable to winding up of any micro finance institution, the Reserve Bank, on being satisfied that a micro finance institution—(a) is unable to pay its debt; or (b) has by virtue of provisions of this Act become disqualified to carry on the activity of micro finance institution; or (c) has failed to comply with any directives or orders issued by the Reserve Bank including the Cease and Desist order or otherwise; or (d) the continuance of the micro finance institution is detrimental to public interest or to the interest of the clients of the institution, may file an application for winding up or any other application by whatever name called for closure of its activity, before the appropriate authority or Court empowered to wind up the business or activity of the micro finance institution under the law applicable to such micro finance institution. However, it provides that where the micro finance institution against whom application for

winding up is filed is also engaged in any other activity, the concerned micro finance institution may be permitted to continue such activity and restrict the winding up or closure of the business only to the activity of providing micro finance services with the approval of the concerned authority or Court. Sub-clause (2) of this clause provides that any authority or Court, empowered to wind up the business of the micro finance institution, may pass such orders as it deems fit. It also explains that for the purpose of this section, a micro finance institution shall be deemed to be unable to pay its debts, if it has refused or has failed to meet within five working days any lawful demand made at any of its officers or branches and the Reserve Bank certifies in writing that such institution is unable to pay its debt.

Clause 31.—This clause relates to grants by the Central Government. This clause provides that the Central Government may, after due appropriation made by Parliament by law in this behalf, grant such sum of money as that Government may think fit, to the Reserve Bank for being utilised for the purposes specified under sub-section (3) of section 32.

Clause 32.—This clause relates to constitution of Micro Finance Development Fund. Sub-clause (1) of this clause provides that the Reserve Bank shall constitute a fund to be called the Micro Finance Development Fund (hereafter called “the Fund”) and there shall be credited thereto—(a) all Government grants received and fees payable under this Act; (b) all sums that may be raised by the Reserve Bank from donors, institutions, other entities and public for the purpose of this Act; (c) any interest or other income received out of investments made from the Fund under clause (c) of sub-section (3); (d) the balance outstanding in the Micro Finance Development and Equity Fund maintained by the Reserve Bank, before the commencement of this Act. Sub-clause (2) of this clause provides that the Fund shall be managed by the Reserve Bank in such manner as may be specified by regulations duly approved by the Central Board of Directors of the Reserve Bank.

Sub-clause (3) of this clause provides that the Fund shall be applied—(a) to provide loans, refinance, grant, seed capital or any other micro credit facilities to any micro finance institution or any other agency which the Reserve Bank may by regulations specify; (b) to give grants or loans for training and capacity building of institutions engaged in micro finance services and personnel engaged in promoting and providing micro finance services and meeting other expenditure related to such training and capacity building on such terms and conditions as may be specified by regulations; (c) to invest in equity or any other form of capital or quasi-equity of a micro finance institution or any other agency on such terms and conditions as may be specified by regulations; (d) to meet the necessary expenses in relation to collection, analysis, dissemination of information relating to micro finance, conduct of such research, experiments or studies as may be specified, and to design, promote, and propagate such practices as may be considered conducive to the growth of micro finance services; (e) to meet any other expenses as may be required for the promotion of micro finance services as the Reserve Bank by regulations specify; (f) to meet any other expenses (except salaries, allowances and other remuneration of officers and other employees) of the Reserve Bank in connection with discharge of its functions as may be specified by regulations.

Clause 33.—This clause relates to redressal of grievances against micro finance institutions. Sub-clause (1) of this clause provides that the Reserve Bank shall formulate a scheme for redressal of grievances of beneficiaries of micro finance services against micro finance institutions and may entrust the functions of redressal of such grievance redressal to any Ombudsman established under any other scheme framed by the Reserve Bank for clients of banks, with powers to issue directions to micro finance institutions. Sub-clause (2) of this clause provides that any scheme to be formulated under sub-section (1) shall provide for— (a) nature of grievance and complaints that may be entertained; (b) procedure for redressal of grievances and complaints; (c) any other matter that may be necessary for effective redressal of grievances.

Clause 34.—This clause relates to contravention of provisions of the Act, orders and directions. It provides that if any provision of this Act is contravened or any default is made

in complying with any other requirement of this Act or of any rules, regulations or orders or directions given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with imprisonment for a term not exceeding two years or with fine which may extend to five lakh rupees and where, a contravention or default is a continuing one, with further fine, which may extend to ten thousand rupees for everyday after the first, during which the contravention or default continues.

Clause 35.—This clause relates to giving false information. It provides that whoever, in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provision of this Act, or any rule, regulation or order or direction made or given thereunder, wilfully makes a statement which is false in any material particulars knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five lakh rupees.

Clause 36.—This clause relates to offences by micro finance institutions. Sub-clause (1) of this clause provides that where an offence under this Act is committed, the person who was in charge of, and was responsible to, the micro finance institution for the conduct of business of the micro finance institution, as well as the micro finance institution itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, it provides that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Sub-clause (2) of this clause provides that notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a micro finance institution and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any person who is or was a director, trustee, member of the managing committee, manager, secretary or other officer or employee of the micro finance institution when the offence is or was committed, such person shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. This clause also explains that, for the purposes of this section, any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or principal office of the micro finance institution, is situated.

Clause 37.—This clause relates to powers of the Reserve Bank to impose penalty. Sub-clause (1) of this clause provides that notwithstanding anything to the contrary contained in section 34, the Reserve Bank may impose monetary penalty, which may extend up to five lakh rupees where the contravention is of the nature referred to in section 34. Sub-clause (2) of this clause provides that for the purpose of imposing penalty under this section, the Reserve Bank shall serve notice on the micro finance institution requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such micro finance institution. Sub-clause (3) of this clause provides that any penalty imposed by the Reserve Bank under sub-section (1) shall be payable within a period of thirty days from the date on which the notice by the Reserve Bank demanding payment of the amount is served on the micro finance institution and the orders of the Reserve Bank shall be enforceable in the same manner as if it were a decree made by the civil court in a civil suit. Sub-clause (4) of this clause provides that all sums realised by imposition of penalties under this section shall be credited to the Consolidated Fund of India.

Clause 38.—This clause relates to bar of civil court jurisdiction. This clause provides that no civil court shall have jurisdiction against any micro finance institution in respect of any contravention or default for which any penalty has been imposed by the Reserve Bank.

Clause 39.—This clause provides for certain offences to be cognizable. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence connected with or arising out of acceptance of thrift or repayment thereof, shall be a cognizable offence.

Clause 40.—This clause relates to cognizance of offences. Sub-clause (1) of this clause provides that no court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder except upon a complaint made in writing by an officer or other person authorised, by general or special order, by the Reserve Bank. However, no such officer or other person shall be competent to file the complaint unless he is generally or specially authorised in writing by the Reserve Bank. Sub-clause (2) of this clause provides that no court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. Sub-clause (3) of this clause provides that notwithstanding anything to contrary contained in the Code of Criminal Procedure, 1973, a court, if it considers fit to do so, may dispense with the attendance of the officer of the Reserve Bank or other person filing the complaint on its behalf, but the court in its discretion at any stage of the proceeding, may direct personal attendance of such officer or the person.

Clause 41.—This clause relates to application of fine. It provides that the court imposing any fine under this Act may direct that the whole or any part thereof shall be applied for, or towards payment of, the cost of the proceeding.

Clause 42.—This clause relates to delegation of certain powers of the Reserve Bank. Sub-clause (1) of this clause provides that the Central Government, in consultation with the Reserve Bank may, by notification, delegate any of the powers of the Reserve Bank conferred under this Act, except under sections 30, 37 and 49, to the National Bank or any agency under the control of the Central Government in respect of any micro finance institution or a class of micro finance institutions or micro finance institutions generally, subject to such conditions as it deems fit. Sub-clause (2) of this clause provides that any notification issued under sub-section (1) shall specify the specific powers under various provisions of this Act which are delegated to the National Bank or any agency under the control of the Central Government. Sub-clause (3) of this clause provides that the National Bank or agency under the Control of the Central Government shall exercise the powers delegated by the Central Government subject to such conditions as may be specified in the notification under sub-section (1) and such directives and guidelines which may be issued by the Reserve Bank from time to time. Sub-clause (4) of this clause provides that any action taken by the National Bank or agency under the Control of the Central Government pursuant to the delegation of powers under sub-section (1) shall be deemed to be the action of the Reserve Bank and provisions contained in section 17 for appeal shall be applicable.

Clause 43.—This clause relates to preference to members or clients of micro finance institution in repayment. It provides that in the event of any micro finance institution making default in repayment of thrift to its members or clients who had made a contribution to thrift, all the workmen shall be paid their dues in priority to all others and thereafter all such members or clients of such micro finance institution shall have a preference in repayment, and shall have the first charge over the assets of the micro finance institution and specified unencumbered securities, if any, referred to in sub-section (3) of section 18.

Clause 44.—This clause relates to power of the Central Government to issue directions. Sub-clause (1) of this clause provides that the Central Government may issue directions to the Reserve Bank, the Micro Finance Development Council or any State Micro Finance Council on matters of policy and implementation of schemes and other measures as may be necessary for orderly growth and development of micro finance institutions for promoting financial inclusion. Sub-clause (2) of this clause provides that without prejudice to the provisions of sub-section (1), the Reserve Bank, the Micro Finance Development Council

or any State Micro Finance Council shall, in exercise of the powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. However, the Reserve Bank, the Micro Finance Development Council or any State Micro Finance Council shall as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section. Sub-clause (3) of this clause provides that the decision of the Central Government, whether a question is of policy or not, shall be final.

Clause 45.—This clause relates to power of the Central Government to call for information, statements, etc. This clause provides that the Central Government may, in consultation with the Reserve Bank from time to time, require the furnishing of information, returns, statements and such other particulars in regard to micro finance institutions in such form and in such manner as may be prescribed, and the micro finance institution shall furnish to the Central Government such information, returns, statements and particulars.

Clause 46.—This clause relates to power to exempt class or classes of micro finance institutions from the provisions of this Act. Sub-clause (1) of this clause provides that the Central Government may, in the public interest, by notification, direct that all or any of the provisions of this Act,—(a) shall not apply to such class or classes of micro finance institutions; (b) shall apply to the class or classes of micro finance institutions with such exceptions, modifications and adaptations, as may be specified in the notification. Sub-clause (2) of this clause provides that a copy of every notification issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both Houses.

Clause 47.—This clause relates to act having an overriding effect. It provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Clause 48.—This clause relates to protection of action taken under the Act. It provides that no suit or other legal proceedings shall lie against the Reserve Bank, or any director, or any officer, or other employee of the Reserve Bank, or any other person or agency authorised by the Reserve Bank, to discharge any functions under this Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or of any other law or provision having the force of law.

Clause 49.—This clause relates to power of the Central Government to make rules. Sub-clause (1) of this clause provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. Sub-clause (2) of this clause enumerates the matters in respect of which such rules may be made are specified therein.

Clause 50.—This clause relates to power of the Reserve Bank to make regulations. Sub-clause (1) of this clause provides that the Reserve Bank, with the previous approval of the Central Government may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to carry out the purposes of this Act. Sub-clause (2) of this clause enumerates the matters in respect of which such regulations may be made are specified therein.

Clause 51.—This clause relates to rules, regulations and orders to be laid before Parliament. It provides that every rule or order made by the Central Government and every regulation made by the Reserve Bank and any order of exemption made under section 44 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is

in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or order or both Houses agree that the rule, regulation or order should not be made, the rule, regulation or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or order.

Clause 52.—This clause relates to power to remove difficulties. Sub-clause (1) of this clause provides that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty. However, it provides that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act. Sub-clause (2) of this clause provides that every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 3 of the bill provides for constitution of a Council to be known as the Micro Finance Development Council to advise the Central Government on formulation of policies and measures to be undertaken for orderly growth and development of micro finance institutions and schemes to be framed therefor. Members of the Council shall receive such fees and allowances as may be determined by rules.

2. Clause 31 of the bill provides that the Central Government may, after due appropriation made by Parliament by law in this behalf, grant such sums of money as the Government may think fit, to the Reserve Bank for being utilised for the purposes of providing loans, refinance, grant, seed capital.

3. Clause 32 of the Bill provides that the Reserve Bank shall constitute a fund to be called the Micro Finance Development Fund and there shall be credited, *inter alia*, all Government grants received and fees payable; all sums that may be raised by the Reserve Bank from donors, institutions, other entities and public; any interest or other income received out of investments made from the Fund and the balance outstanding in the Micro Finance Development and Equity Fund.

4. Any grant, from the Consolidated Fund of India, to be made to the Reserve Bank pursuant to the provisions of the Bill will be with the due approval of the Parliament to be obtained separately. The amount of grant to be made to the Reserve Bank from the Consolidated Fund of India cannot be estimated at present as it would depend upon the circumstances at the point of time of making such grant.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 46 of the Bill provides that the Central Government may, in the public interest, by notification, direct that all or any of the provisions of this Act,— (a) shall not apply to such class or classes of micro finance institutions; (b) shall apply to the class or classes of micro finance institutions with such exceptions, modifications and adaptations, as may be specified in the notification. Sub-clause (2) of the said clause provides that a copy of every notification issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both Houses.

2. Sub-clause (1) of clause 49 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made under the proposed legislation. These matters, *inter alia*, relate to—(a) as the higher amount for such special purposes under sub-clause (A) of clause (j) of sub-section (1) of section 2; (b) the form and manner of providing micro finance services under clause (j) of section 2; (c) the fees and allowances receivable by members of the Council under sub-section (2) of section 5; (d) the time and place and the rules of procedure for transaction of business at the meetings of the Council under section 6; (e) the term of office and allowances of Members of the State Micro Finance Council under section 9; (f) the authority before whom appeal may be preferred under sub-section (1), the form and the manner of filing of appeal under sub-section (2) of section 17; (g) such other functions to be performed by the Reserve Bank under clause (n) of sub-section (2) of section 24; (h) the form and manner of furnishing of returns, statements and other particulars under section 45; (i) any other matter which is to be, or may be, prescribed.

3. Sub-clause (1) of clause 50 of the Bill empowers the Reserve Bank, with the previous approval of the Central Government, by notification in the Official Gazette, to make regulations not inconsistent with the provisions of the proposed legislation and the rules made thereunder to carry out the purposes of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such regulations may be made under the proposed legislation. These matters, *inter alia*, relate to—(a) the other terms and conditions of remittance of funds under sub-clause (iv) of clause (j) of section 2; (b) the rules of procedure to be observed by the District Micro Finance Committee under sub-section (2) of section 10; (c) the form and manner of submitting quarterly report by the District Micro Finance Committee to the Reserve Bank under section 12; (d) the form and manner and fee payable for making an application for registration by the micro finance institution to the Reserve Bank under sub-section (1) of section 14; (e) other higher amount of net owned fund under clause (c) of sub-section (1) of section 15; (f) the unencumbered securities for the purpose of investment under sub-section (3) of section 18; (g) the form in which the balance sheet, profit and loss account or an income and expenditure account shall be prepared under section 19; (h) qualifications and experience of a person duly qualified under section 20; (i) the form and the manner of filing return under section 23; (j) the maximum limit of the margin and the annual percentage rate to be charged by the micro finance institution for providing micro credit facilities to its clients under clause (d) of sub-section (2) of section 24; (k) the procedure for removal of any officer, office bearer or managing committee of the micro finance institution or for prohibiting the micro finance institution from providing micro finance services for such period as the Reserve Bank may deem fit under sub-section (6) of section 27; (l) the manner of management of Fund by the Reserve Bank under sub-section (2) of section 32; (m) providing loans, refinance, grants, seed capital or any other financial assistance to any micro finance institution or any other agency under clause (a) of sub-section (3) of section 32; (n) the terms and conditions

subject to which grants or loans shall be given by the Reserve Bank under clause (b) of sub-section (3) of section 32; (o) the terms and conditions subject to which the investment in equity or any other form of capital or quasi-equity of a micro finance institution shall be made under clause (c) of sub-section (3) of section 32; (p) any other expenses as may be required for the promotion of micro finance services under clause (e) of sub-section (3) of section 32; (q) the other expenses (except salaries, allowances and other remuneration of officers and other employees) of the Reserve Bank under clause (f) of sub-section (3) of section 32; and (r) any other matter which is required to be, or may be, specified by regulations.

4. Clause 51 of the Bill provides that every rule made by the Central Government and every regulation made by the Reserve Bank under the proposed legislation are required to be laid before each House of Parliament.

5. The matters in respect of which rules and regulations may be made are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 63 OF 2012

A Bill further to amend the Small Industries Development Bank of India Act, 1989.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Small Industries Development Bank of India (Amendment) Act, 2012.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Small Industries Development Bank of India Act, 1989 (hereinafter referred to as the principal Act), in the long title, for the words “industry in the small-scale sector”, at both the places where they occur, the words “industrial concerns and micro enterprises, small enterprises and medium enterprises” shall be substituted.

Amendment of
long title.

Substitution
of references
to certain
expressions
by certain
other
expressions.

3. Throughout the principal Act [except in clause (h) of section (2) and sub-section (4) of section 38],—

(a) for the words “industrial concern in the small-scale sector”, wherever they occur, the words “industrial concern or micro enterprise or small enterprise or medium enterprise” shall be substituted;

(b) for the words “industrial concerns in the small-scale sector”, wherever they occur, the words “industrial concerns or micro enterprises or small enterprises or medium enterprises” shall be substituted;

(c) for the words “industries in the small-scale sector”, wherever they occur, the words “industrial concerns or micro enterprises or small enterprises or medium enterprises” shall be substituted;

(d) for the words “industry in the small-scale sector”, wherever they occur, the words “industrial concerns or micro enterprises or small enterprises or medium enterprises” shall be substituted.

Amendment
of section 2.

4. In section 2 of the principal Act,—

(a) for clause (d), the following clause shall be substituted, namely:—

‘(d) “Development Bank” means the IDBI Bank Limited registered under section 3 of the Companies Act, 1956 [erstwhile known as the Industrial Development Bank of India Limited as referred to in clause (b) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003];’;

1 of 1956.

53 of 2003.

(b) after clause (e), the following clause shall be inserted, namely:—

‘(ea) “enterprise” means an enterprise as defined in clause (e) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 ;’;

27 of 2006.

(c) in clause (h),—

(i) in the opening portion, for the words ‘ “industrial concern in the small-scale sector” means any concern’, the words ‘ “industrial concern” means any concern with an investment limit, as may be specified, by unanimous resolution, by the Board, and which is’ shall be substituted;

(ii) after sub-clause (xvi), the following sub-clauses shall be inserted, namely:—

“(xvii) floriculture including cultivation, treatment and packaging of flowers or any other process connected with flowers which results in a value added activity;

(xviii) setting up or development of tourism related facilities, including amusement parks, cultural centres, convention centres, restaurants, travel and transport (including those at airports), tourist service agencies, guidance and counselling services to tourists;

(xix) rendering financial assistance by way of venture capital, risk capital, factoring and discounting;

(xx) development, maintenance and construction of roads;

(xxi) construction;

(xxii) entertainment (including film) industry;”;

65 of 1951.

(iii) in sub-clause (xviii), the words, figures, letter and brackets "and which is regarded as a small-scale undertaking under section 11B of the Industries (Development and Regulation) Act, 1951" shall be omitted;

(d) after clause (ha), the following clauses shall be inserted, namely:—

27 of 2006.

(hb) "medium enterprise" means an enterprise as defined in clause (g) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006;

27 of 2006.

(hc) "micro enterprise" means an enterprise as defined in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006;

(hd) "micro finance institution" includes any institution engaged in providing micro finance services;";

(e) after clause (lc), the following clause shall be inserted, namely:—

27 of 2006.

(ld) "small enterprise" means an enterprise as defined in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006;".

5. In section 13 of the principal Act, in sub-section (1),—

Amendment
of section 13.

(a) in clause (i),—

(i) for the words "or such other financial institutions", the words "or such micro finance institutions or other financial institutions" shall be substituted;

(ii) for the words "loans or advances", at both the places where they occur, the words "loans, advances or micro finance services" shall be substituted;

(b) in clause (iv), after the words "National Small Industries Corporation", the words "micro finance institutions" shall be inserted;

(c) in clause (v),—

(i) after the words "any such concern", the words "or enterprise" shall be inserted;

(ii) in the proviso, after the words "of that concern", the words "or enterprise" shall be inserted;

(d) in clause (vii), after the words "such financial institutions", the words "including micro finance institutions," shall be inserted;

(e) after clause (xxix), the following clauses shall be inserted, namely:—

1 of 1956.

"(xxixa) granting loans and advances to Public Financial Institutions specified under section 4A of the Companies Act, 1956 and such other financial institutions or agencies engaged or to be engaged in providing financial assistance for the purpose of—

(a) extending financial assistance for setting up of infrastructure projects beneficiaries of which shall include industrial concerns or micro enterprises or small enterprises or medium enterprises;

(b) extending financial assistance by such institutions or agencies to their borrowers for sourcing of materials, components, equipment or other articles or services from industrial concerns or micro enterprises or small enterprises or medium enterprises or making payments to industrial concerns or micro enterprises or small enterprises or medium enterprises on behalf of their borrowers or both; and

(c) providing financial assistance by such institutions or agencies to their borrowers engaged in providing marketing and other support services to the industrial concerns or micro enterprises or small enterprises or medium enterprises;

(xxixb) to enter into securitisation transaction for the purpose of—

(a) extending the services of the Small Industries Bank to a large number of industrial concerns or micro enterprises or small enterprises or medium enterprises through intermediaries by way of buyout of their assets or otherwise; and

(b) acquiring the rights and interests of the intermediaries including any other right incidental thereto, in relation to any loan or advance granted to, or any receivables from, the industrial concerns or micro enterprises or small enterprises or medium enterprises;

(xxixc) granting loans and advances to any person for the purpose of providing financial support to micro finance institutions engaged or to be engaged in the promotion, development or financing of industrial concerns or micro enterprises or small enterprises or medium enterprises;

(xxixd) subscribing to, or purchasing stocks, shares, bonds or debentures or units of, any micro finance institution or such other entities including Equity Funds and marketing intermediaries catering to micro finance services;

(xxixe) providing any guarantee, not specified in clauses (xvi) to (xix), to industrial concerns or micro enterprises or small enterprises or medium enterprises eligible for assistance from the Small Industries Bank;

(xxixf) providing non-life insurance products to industrial concerns or micro enterprises, small enterprises or medium enterprises assisted by the Small Industries Bank and selling non-life insurance products to other industrial concerns or micro enterprises, small enterprises or medium enterprises under a corporate arrangement with any domestic or international insurance company, as approved by the Board and the Reserve Bank;”.

Amendment
of section 19.

6. In section 19 of the principal Act, —

(a) in sub-section (1), for the words and figures “Foreign Exchange Regulation Act, 1973”, the words and figures “Foreign Exchange Management Act, 1999” shall be substituted;

46 of 1973.
42 of 1999.

(b) in sub-section (3), for the words “prevailing at the time of grant thereof, and the amount due thereunder shall be repayable in equivalent Indian currency”, the words, figures and letters “prevailing at the time of such grant and thereafter, based on the exchange rate prevailing as on the 31st March, every year or as may be required under any law for the time being in force or accounting standards, as referred to in sub-section (3C) of section 211 of the Companies Act, 1956, as the case may be, and the amount due thereunder shall be repayable in foreign currency or in equivalent Indian currency” shall be substituted;

1 of 1956.

(c) in sub-section (4), in clause (a), for the words “repayment thereof by the concern”, the words “repayment thereof by the concern or micro enterprise or small enterprise or medium enterprise” shall be substituted.

Amendment
of section
37A.

7. In section 37A of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Notwithstanding anything contained in any other law for the time being in force, where an accommodation has been granted to a borrowing institution, all securities held, or which may be held, by such borrowing institution, on account of

any transaction in respect of which such accommodation has been granted by the Small Industries Bank, shall be held by such institution in trust for the Small Industries Bank and shall be treated as charged in favour of the Small Industries Bank.”

8. In section 38 of the principal Act,—

Amendment
of section 38.

(a) in sub-section (1), after the words “assigned to the Small Industries Bank” occurring at the end, the words “by the industrial concern or micro enterprise or small enterprise or medium enterprise or take over the possession of the property mortgaged or hypothecated by the third party as well as the right to transfer by way of lease or sale and realise the property so mortgaged, hypothecated or assigned to the Small Industries Bank by such third party” shall be inserted;

(b) in sub-section (4),—

(i) the words “against an industrial concern in the small-scale sector” shall be omitted;

(ii) for the words “from the industrial concern in the small-scale sector”, the words “from the industrial concern or micro enterprise or small enterprise or medium enterprise” shall be substituted.

(c) after sub-section (5), the following shall be inserted, namely:—

‘Explanation.—For the purposes of this section, “third party” means any person who has given any guarantee or created any mortgage or pledge or hypothecation or made any assignment as a security for the financial assistance granted by the Small Industries Bank.’

9. In section 39 of the principal Act,—

Amendment
of section 39.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him—

(i) to take possession of such property, effects, actionable claims, books of account or other documents relating thereto; and

(ii) to forward to the Small Industries Bank or such other person, as the case may be.”;

(b) in sub-section (3), after the words “District Magistrate”, the words “or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate” shall be inserted.

10. In section 41 of the principal Act, for the words “such industrial concern”, wherever they occur, the words “such industrial concern or micro enterprise or small enterprise or medium enterprise” shall be substituted.

Amendment
of section 41.

11. In section 47 of the principal Act, in sub-section (1),—

Amendment
of section 47.

(a) for the words “such industrial concern”, the words “such industrial concern or micro enterprise or small enterprise or medium enterprise” shall be substituted;

(b) for the words “that industrial concern”, the words “that industrial concern or micro enterprise or small enterprise or medium enterprise” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Small Industries Development Bank of India Act, 1989 (hereinafter referred to as the Act) provides for the establishment of the Small Industries Development Bank of India (SIDBI) for the purpose of promoting, financing and development of 'industrial concerns in the small-scale sector' and for coordinating the functions of the institutions engaged in promoting, financing or developing such industrial concerns. SIDBI has also been granted special authorisation to provide direct finance to Medium Enterprises and certain other activities.

2. Since its inception, the SIDBI is operating as a principal financial institution for the development of industrial concerns in the small-scale sector. The industrial concern in the small sector has been defined in clause (h) of section 2 of the SIDBI Act, 1989 which, *inter alia*, provides that such other activity as the Central Government may, having regard to the objects of this Act, by notification, specify in this behalf; or the research and development of any concept, technology, design, process or product whether in relation to any of the matters aforesaid, including any activities notified by the Central Government under sub-clause (xvii) of said clause (h), or any other matter and which is regarded as a small-scale undertaking under section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951) shall be industrial concern in the small-scale sector.

3. The notification of the Government of India, in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) Order No. S.O. 857(E), dated the 10th December, 1997 issued, in exercise of the powers conferred by sub-section (1) of section 11B and sub-section (1) of section 29B of the Industrial (Development and Regulation) Act, 1951, as amended from time to time, specified the factors on the basis of which an industrial undertaking shall be regarded as a small-scale or as an ancillary industrial undertaking for the purposes of the said Act, has been rescinded by notification of the Government of India, in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) Order No. S.O. 563(E), dated the 27th February, 2009.

4. The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) was enacted which provides for classification of an "enterprise" into micro enterprise, small enterprise and medium enterprise.

5. In view of the foregoing paragraphs 3 and 4 above, it has become necessary and desirable to accordingly amend the definition of "industrial concern in the small sector" and substitute the definition and expressions "industrial concern in the small sector", wherever they occur, with the expression "industrial concern or micro enterprise or small enterprise or medium enterprise" in the SIDBI Act.

6. In addition to the amendments specified in the preceding paragraph, the Bill, *inter alia*, seeks to—

(a) confer power upon the Board of Directors of SIDBI to specify by unanimous resolution the investment limit for the purposes of industrial concern;

(b) enlarge the definition of industrial concern with incorporation of the following activities notified by the Central Government from time to time in clause (h) of section 2 of the SIDBI Act (i) floriculture including cultivation, treatment and packaging of flowers or any other process connected with flowers which results in a value added activity; (ii) setting up or development of tourism related facilities, including amusement parks, cultural centres, convention centres, restaurants, travel and transport (including those at airports), tourist service agencies, guidance and counselling services to tourists; (iii) rendering financial assistance by way of venture capital, risk capital, factoring and discounting; (iv) development, maintenance and construction of roads; (v) construction; (vi) entertainment (including film) industry;

(c) amend section 19 of the SIDBI Act to enable SIDBI to accept repayment of foreign currency loans in foreign currency and maintaining foreign currency loan accounts as required under any law or Accounting Standards;

(d) amend section 37A of the SIDBI Act to provide that the securities held by a borrowing institution held in trust on account of any transaction in respect of which such accommodation has been granted by the Small Industries Bank, shall be held by such institution in trust for the Small Industries Bank and shall be treated as charged in favour of the Small Industries Bank;

(e) amend section 38 of the SIDBI Act to enable the SIDBI to take over the possession of the property mortgaged or hypothecated by the third party as well as the right to transfer by way of lease or sale and realise the property so mortgaged, hypothecated or assigned to the Small Industries Bank by such third party (in addition to taking over the management or possession of the micro enterprise or small enterprise or medium enterprise) in case micro enterprise or small enterprise or medium enterprise makes a default in repayment of any loan or advances or meeting any obligation in relation to any guarantee given by them;

(f) amend section 39 of the SIDBI Act to enable the District Magistrate or the Chief Metropolitan Magistrate to authorise any officer subordinate to him, to take possession of property for speedier disposal of cases.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 16th May, 2012.

PRANAB MUKHERJEE.

T.K. VISWANATHAN,
Secretary-General.